

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	) MB Docket No. 14-82
	)
<b>PATRICK SULLIVAN</b>	) FRN 0003749041, 0006119796,
(Assignor)	) 0006149843, 0017196064
	)
and	) Facility ID No. 146162
	)
<b>LAKE BROADCASTING, INC.</b>	) File No BALFT-20120523ABY
(Assignee)	)
	)
Application for Consent to Assignment of	)
License of FM Translator Station W238CE,	)
Montgomery, Alabama	)

To: Chief Administrative Law Judge Richard L. Sippel

**TRIAL BRIEF OF LAKE BROADCASTING, INC.**

Jerold L. Jacobs

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Counsel for Lake Broadcasting, Inc.

April 26, 2017

**Before the  
Federal Communications Commission  
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To: Marlene H. Dortch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

**TRIAL BRIEF OF LAKE BROADCASTING, INC.**

Lake Broadcasting, Inc. ("Lake"), by its attorney, pursuant to the Presiding Judge's *Order*, FCC 17M-08, released February 28, 2017, hereby provides its Trial Brief for the evidentiary hearing beginning on May 3, 2017 in this matter.

I. A concise proffer of what Lake intends to prove

There are four hearing issues designated in the *Hearing Designation Order*, DA 14-703, released May 23, 2014, in MB Docket No. 14-82:

- (1) To determine the effect, if any, of Michael Rice's felony convictions on his qualifications and/or the qualifications of Lake to be a Commission licensee;
- (2) To determine the effects, if any, of the misrepresentation and lack of candor by Mr. Rice's broadcast companies on his qualifications and/or the qualifications of Lake to be a Commission licensee;

(3) To determine whether Mr. Rice or Lake is qualified to be a Commission licensee; and

(4) To determine whether the captioned application for consent to the assignment of license of Station W238CE should be granted.

Lake intends to prove that:

(a) Mr. Rice's felony convictions have no continuing effect on his qualifications or the qualifications of Lake to be a licensee because Mr. Rice is fully rehabilitated from his past criminal activity, has a very low risk of re-offending, and is fully fit to become a Commission licensee again;

(b) Lake has not operated any broadcast station since October 2001 but has remained in good standing as a Missouri corporation to date. While Mr. Rice is the physical embodiment of Lake, as its President, sole director and 100% owner, Lake was previously disqualified independently of Mr. Rice, and Mr. Rice was not held accountable for Lake's misrepresentation and lack of candor misconduct. Lake is now fully fit to become a Commission licensee again.

(c) The subject assignment application should be granted.

II. A brief summary of what each witness is expected to testify to in support of the proffer of proof

To prove these points, Lake presents three Direct Case Exhibits:

LB Exhibit 1 is a biographical statement of Mr. Rice, which covers his early history through the present time. Mr. Rice will testify at the hearing. Exhibit 1 shows that he is fully rehabilitated, is involved in civic and religious

activities, does occasional broadcast engineering work, is in moderately good health but suffers from diabetes and hypertension, and has obtained six letters of reference from long-time acquaintances and business associates who all express awareness of his prior history, describe their current neighborhood or business relationship, and variously state their beliefs that Mr. Rice is honest, is respected in his community, is a changed man, has achieved extraordinary rehabilitation and good standing in his St. Charles area, and fully complies with all FCC and FAA regulations.

LB Exhibit 2 is a statement about the status of Lake Broadcasting, Inc., a Missouri for-profit corporation, which has not operated a broadcast station since 2001 but remains in good standing as a Missouri corporation. As its President, sole director, and 100% owner, Mr. Rice will testify at the hearing that he and Lake can both be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission and will comply in all other respects with the Commission's Rules, regulations, and policies.

LB Exhibit 3 are a statement and psychological reports prepared by Dr. Ann Dell Duncan-Hively, a Ph.D. clinical psychologist with a J.D. law degree practicing psychology in Chesterfield, Missouri. She examined Mr. Rice at length in 1991 and again in 2014, and concludes that Mr. Rice has been successfully rehabilitated and his probability of reoffending is very low. She will testify at the hearing that she finds no psychological basis for barring Mr. Rice from gaining a broadcast license again. He represents the epitome of the term "rehabilitation".

III. A list of documents which will be moved into evidence, a brief description of



each document, and a statement of relevance with respect to each document

LB Exh. 1 is Mr. Rice's biographical statement. In addition to moving its admission, there are four (4) Appendices which will also be moved into evidence:

- A. Mr. Rice's Certificate of Completion for the MOSOP course in prison, showing rehabilitation training;
- B. Mr. Rice's current Voter Registration identification card, showing that he has been readmitted to full civil rights;
- C. Six letters of reference from neighbors and business associates; and
- D. An October 31, 2011 letter from Mr. Rice's previous psychiatrist (now deceased), Dr. Wayne A. Stillings, indicating that Mr. Rice is "fully recovered and rehabilitated".

LB Exh. 2 is Lake's statement of current legal status and good standing. In addition to moving its admission, there are two (2) Appendices which will also be moved into evidence:

- A. Missouri state certification that Lake is in Good Standing;
- B. Lake's 2017 current Registration Report with the State of Missouri.

LB Exh.3 is a statement by Mr. Rice's current psychologist, Dr. Ann Dell Duncan-Hively, Ph.D., J.D. There are three (3) Appendices which will also be moved into evidence:

- A. Dr. Duncan-Hively's curriculum vitae, showing her

qualifications as an expert witness;

B. Dr. Duncan-Hively's Sept. 18, 1991 Psychological Evaluation of Mr. Rice, showing his initial psychological problems;

C. Dr. Duncan-Hively's Nov. 22, 2014 Psychological Report of Mr. Rice, showing his rehabilitation since 1991.

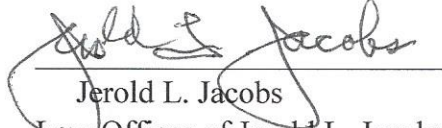
IV. Points and Authorities on anticipated evidentiary, procedural, and substantive issues, citing only key cases and authorities relied on

The Enforcement Bureau seeks to violate the "law of the case" set forth in the *Hearing Designation Order, supra*, Para. 27, that the Presiding Judge must not "relitigate any of the findings of fact and/or conclusions of law" determined in prior FCC and state court proceedings related to Mr. Rice or Lake. The Bureau has proffered 34 pages of inadmissible hearsay evidence to try to bolster its case against Mr. Rice with reports, etc., from the 1990's. Lake has objected to these exhibits and to passages in other exhibits relating thereto, and hopes that the Presiding Judge will grant the objections in light of Para. 27 and the Hearsay Rule.

Lake is also concerned that footnote 60 of the *Hearing Designation Order, supra*, contains language which, if implemented, would turn this proceeding into a farce. While, on the one hand, the *Hearing Designation Order* declares that the proceeding may not relitigate past findings and conclusions, and Para. 21 says that the purpose of this hearing is "to evaluate whether Rice has been rehabilitated to an extent that the Commission is fully confident Rice and/or LBI can be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission; and Rice and/or LBI will comply in all other respects with the Commission's

Rules, regulations, and policies,” footnote 60 allows the Presiding Judge to consider whether “crimes involving child sex abuse are so egregious, so utterly shocking to the conscience, and so patently inconsistent with the public interest, that a person so convicted, regardless of when the conviction took place, may be determined to be qualified to be a Commission licensee only in the most extraordinary and compelling of circumstances.” Lake submits that it will fully demonstrate at hearing Rice’s and Lake’s rehabilitation based on the evidence to be presented. Thus, it would be an egregious error to use footnote 60 to deny grant of the pending application.<sup>1</sup>

Respectfully submitted,



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Dated: April 26, 2017

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<sup>1</sup> The word “egregious” is hardly ever found in Commission decisions and is basically undefined. If the Presiding Judge is inclined to invoke footnote 60, Lake urges that he should request briefs on that word and how it could reasonably be applied to the facts in this proceeding.

## CERTIFICATE OF SERVICE

I, Jerold L. Jacobs, hereby certify that on this 26th day of April, 2017, I filed the foregoing "TRIAL BRIEF OF LAKE BROADCASTING, INC." in ECFS and caused a copy to be sent via First Class United States Mail and via e-mail to the following:

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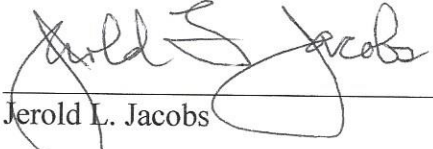
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